

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

JAMEISON BEAM,

Plaintiff,

vs.

OFFICER NELSON, SGT. WALISER,
OFFICER POWELL, and OFFICER
ANDERSON,

Defendants.

CV 17-000022-BU-BMM-JCL

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

Plaintiff Jameison Beam, a prisoner proceeding without counsel, filed a Complaint under 42 U.S.C. § 1983 alleging his rights under the First and Eighth Amendments to the United States Constitution have been violated, he suffered from retaliation, assault, sexual assault, and hate crimes, and Defendants committed perjury and conspiracy. (Complaint, Doc. 2 at 6.)

Pursuant to 28 U.S.C. §§ 1915, 1915A the Court screened the Complaint and determined that as currently plead it violated Rule 8 of the Federal Rules of Civil Procedure and failed to state a federal claim upon which relief can be granted. Beam was given an opportunity to file an amended complaint. (Doc. 8.)

On November 1, 2017, Beam filed a response to the Court's Order indicating that he would not file an amended complaint. (Doc. 11.)

Accordingly, for the reasons set forth in this Court's Order dated September 19, 2017 (Doc. 8), the Court finds that Beam has failed to state a federal claim upon which relief may be granted and therefore issues the following:

RECOMMENDATIONS

1. This matter should be DISMISSED for failure to state a federal claim.
2. The Clerk of Court should be directed to close this matter and enter judgment in favor of Defendants pursuant to Rule 58 of the Federal Rules of Civil Procedure.
3. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaint lacks arguable substance in law or fact.
4. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g) because Beam failed to state a claim upon which relief may be granted.

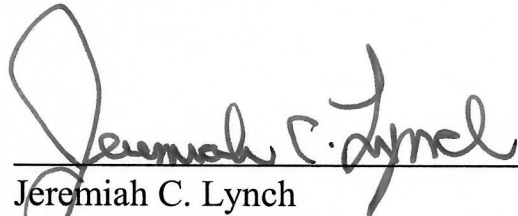
NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Beam may file objections to these Findings and Recommendations within

fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 21st day of November, 2017.



Jeremiah C. Lynch
United States Magistrate Judge

¹Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Beam is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.